IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1231 OF 2005

God's Gift Tower Co.op.Hsg. Soc.Ltd., a Society registered under the provision of the Maharashtra Co-operative Societies Act having its office at 9/10 Cross Lane, Yari Road, Versova, Andheri(West), Mumbai-400 061. ..PETITIONER.

Versus

1. The Municipal Corporation of Greater Bombay, having its office at Mahapalika Marg, Fort, Mumbai-400 001.

2. The Executive Engineer, Building Proposal K-West Ward, Bombay Municipal Corporation Waterfield Road, Bandra (W), Mumbai-50.

3. M/s.S.S.Builders, a partnership firm having its office at 'Landmark', 175-C, Carter Road, Bandra (West), Mumbai-400 050.

4. Ms.Munira Begum, residing at Flat No.804, 8th Floor, God's Gift Tower Co.op.Hsg.Soc.Ltd., 9/10 Cross Lane, Yari Road, Versova, Andheri (West), Mumbai-400 061.

5. The Chief Firm Officer, Mumbai Fire Brigade, 'E' Ward Central Office, Bombay Municipal Corporation, Sheikh Hafisuddin Marg, Byculla, Mumbai-400 008. ..RESPONDENTS.

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Mr.O.J.Menezes, Advocate for the Petitioner.
Mr.J.Rais a/w. Prashant Kulkarni i/b. M/s.Zohair & Co. for Respondent No.3
Mr.T.Puranik, Advocate for Respondent No.5.

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CORAM : **F.I.REBELLO AND**
SMT.V.K.TAHILRAMANI,JJ.

DATE OF RESERVING
THE ORDER: AUGUST 02, 2006.

DATE OF PRONOUNCING
THE ORDER : AUGUST 11, 2006.

ORAL JUDGMENT :(PER SMT.V.K.TAHILRAMANI,J.)

1. The petitioner society has invoked the writ jurisdiction and prayed for directions against Respondent Nos.1 & 2 to implement the notices dated 22nd October, 2003 and 19th December, 2003 and demolish flat Nos.804 and 805 located on the 8th floor of the petitioner's society building situated at 9/10, Cross Lane, Yari Road, Versova, Andheri (West), Mumbai; and for a declaration that the order dated 7th October, 2004 passed by Respondent No.5 be declared as illegal, null and void.

2. The petitioner is a cooperative housing

society registered under the Maharashtra Co-operative Societies Act and has about 48 members who are the owners of the tenements therein. Respondent Nos.1,2 & 5 represent the Municipal Corporation for Greater Bombay, whereas Respondent No.3 is a firm which has built the God's Gift Tower Society and Respondent No.4 claims to be the owner of Flat No.804.

3. As per the Society, Respondent No.3 was required to reserve the entire 8th floor as a refuge area under Rule 44(7)(a) of the Development Control Regulations for Greater Bombay, 1991. It is the case of the petitioner society that Respondent No.1 Corporation while approving building plans had also directed to reserve the entire 8th floor as refuge area. In violation of the approved building plans, the Respondent No.3 constructed the three flats on the 8th floor i.e. Flat Nos. 803, 804 & 805. On the complaints filed by the Society with Respondent No.2, notices were issued on 22nd October, 2003 under Section 53(1) of the M.R.T.P. Act and prior to that on 16th October, 2003 under Section 353 of the B.M.C.

Act calling upon the Respondent No.3 or the owners of the respective flats to demolish them.

4. Writ Petition No.154 of 2004 and Writ Petition No.3111 of 2003 came to be filed before this Court. Writ Petition No.3111 of 2003 was filed by Respondent No.3 challenging these notices; whereas Writ Petition No.154 of 2004 was filed by the Society seeking directions to implement the notices. In the meanwhile, the Respondent No.3 had also filed an Appeal before the State Government under Section 47 of the M.R.T.P. Act and Respondent No.4 had filed Suit No.6335 of 2003 in the City Civil Court at Mumbai challenging the very same notices. These petitions were decided by the learned Division Bench on 11th March, 2004. In the meanwhile, Flat No.803 admeasuring 441.00 sq.ft. which was in the possession of Respondent No.3 came to be demolished by the officers of Respondent no.1. The Appeal filed by Respondent No.3 came to be rejected on 18th February, 2005. In the order dated 11th March, 2004, this Court made it very clear that there could be no compromise in so far

as the mandatory fire safety measures are concerned. On the other hand, while rejecting the Appeal, the State Government noted the contentions of the Corporation that the entire area of 8th floor was reserved for fire refuge under Regulation 44(7)(a) of the D.C.Regulations. In the meanwhile, the Respondent No.4 was allotted another Flat in place of Flat No.804.

5. The contention raised by the Society in this Petition is that area of 400.00 sq.ft. provided on the 8th floor as Fire Refuge area by demolishing Flat No.803 does not meet the statutory requirement and, therefore, both the Flat Nos.804 & 805 are also required to be demolished by Respondent No.3. The Corporation has filed affidavit-in-reply and the builder i.e. Respondent No.3 has also opposed the Petition by filing return. The Respondent No.3 has relied upon the order dated 7th October, 2004 passed by Respondent No.5 stating that the required refuge area was 308.70 sq.ft., whereas Respondent No.3 has provided an area of 400.00 sq.ft. on the 8th floor and thus the requirement under D.C.

Regulations are met. Based on this reply the affidavit filed on behalf of Respondent Nos.1 & 2 states that Flat Nos.804 & 805 are not required to be demolished. We are therefore required to consider the moot question whether an area of 400 sq.ft. provided by the Respondent No.3 by demolishing Flat No.803 on the 8th floor is an adequate area ?

6. Regulation 44(7) of the Development Control Regulations states that, (a) In multi-storeyed and high rise buildings, at least one refuge area shall be provided on the floor immediately above 24m; (b) It shall be on the external walls as a cantilevered projection or in any other manner.; (c) It shall have a minimum area of 15 sq.m. and a minimum width of 3.0 m.; and (d) It shall not be counted in F.S.I.. Looking to the area provided by Respondent No.3 i.e. 400.00 sq.ft., we find that there is compliance of D.C.Regulation 44(7). When these requirements are fulfilled, there is no question of issuing directions to demolish Flat Nos.804 & 805. The notices issued by Respondent Corporation directing demolition of

these two flats were based on the ground that the entire 8th floor was reserved as fire refuge area in the plan sanctioned. Even if that be so, when the petitioner society is seeking a writ from this Court, it must establish before us that the reserved area of 400.00 sq.ft. does not meet the requirements under the D.C.Regulation 44(7). As noted by us, the Respondent No.3 has not diluted in any way the requirements of the said Regulations by reserving 400.00 sq.ft. area as refuge area on the 8th floor.

7. In the premises, this Petition fails. Rules stands discharged accordingly. No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]